

MICHIGAN COUNCIL ON CRIME AND DELINQUENCY

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WRITTEN TESTIMONY OF ELIZABETH ARNOVITS
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MICHIGAN HOUSE OF REPRESENTATIVES, JUDICIARY COMMITTEE
REPRESENTATIVE MARK MEADOWS, CHAIRMAN

December 14, 2009

Chairman Meadows, thank you for your leadership in holding this hearing and in tackling this issue. Thank you members of the full committee and to the subcommittee on indigent defense reform. And, thank you for the opportunity to submit testimony on the status of Michigan's public defense system.

As manifested in the Pledge of Allegiance, a commitment to justice for all is the cornerstone of the American social contract and our democratic system. We entrust our government with the administration of a judicial system that guarantees equal justice before the law – assuring victims, the accused and the general public that resulting verdicts are fair, correct, swift and final.

In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the United States Supreme Court concluded that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” Declaring it an “obvious truth” that “lawyers in criminal courts are necessities, not luxuries,” the Court ruled that states must provide counsel to indigent defendants in felony cases. That mandate has been consistently extended to any case that may result in a potential loss of liberty.¹ The right to counsel was affirmed for juveniles in *In re Gault*, 387 U.S. 1 (1967): “Under our Constitution, the condition of being a boy does not justify a kangaroo court.”

Yet *Gideon*'s promise remains unfulfilled in Michigan. Today, the State of Michigan operates one of the worst systems in the country, failing to provide adequate representation to either adults or juveniles.

¹ *Gideon* established the right to counsel for felony trials. Subsequent cases extend that right to: direct appeals - *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation - *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings resulting in confinement - *In Re Gault*, 387 U.S. 1 (1967); critical stages of preliminary hearings - *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving possible imprisonment - *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and misdemeanors involving a suspended sentence - *Shelton v. Alabama*, 535 U.S. 654 (2002).

What emerges from even the most casual examination of the historical record in Michigan these past 30 years is that the public defense system is failing. The Michigan Public Defense Task Force was formed in 2001 by the Michigan Council on Crime and Delinquency to address the crisis in how public defense services are provided to the state's poorest citizens. Composed of criminal justice and juvenile justice professionals, as well as concerned citizens from all walks of life, the Task Force has actively worked with stakeholders at the local and state levels to identify and advocate for standards and practices integral to effective public defense delivery. In 2008, the Michigan Public Defense Task Force became a founding member of the Campaign for Justice, a non-partisan, non-profit organization dedicated to reforming Michigan's failing public defense system through legislation.

In 2002, the Task Force published *The Eleven Principles of a Public Defense Delivery System* ("Eleven Principles"), patterned on the American Bar Association's (ABA's) *Ten Principles of Indigent Defense*. The Eleven Principles were subsequently adopted by the State Bar of Michigan's Representative Assembly in 2002 and its Board of Commissioners in 2005. These Principles serve as the fundamental elements of a public defense delivery system that can provide effective, efficient, quality, and ethical representation to those charged in criminal or delinquency proceedings who cannot afford to hire an attorney. Unique to the state of Michigan, the Eleventh Principle strives to engage public defenders in the process of exploring and advocating for programs that improve the system and reduce recidivism.

The defense attorney is in a unique place to assist clients, communities and the system by becoming involved in the design, implementation and review of local programs suited to both repairing the harm and restoring the defendant to a productive, crime free life in society. Especially in juvenile delinquency matters, defense attorneys can play a crucial role in diverting children from the cycle of crime. When up to three quarters of incarcerated children have diagnosable mental health disorders and almost fifty percent have drug problems, the time and resources an attorney has really makes a difference in whether these important aspects of a child's life will be spotted and whether she or he may be diverted to treatment or counseling rather than the corrections system.

As Michigan does not have the system to uphold the first ten principles, we certainly are nowhere near implementing the Eleventh Principle. "The ability of defense advocates to currently speak with a single, unified voice on justice matters and effectively advocate in such a manner is seriously diluted in Michigan by the Balkanization of service providers" (*A Race to the Bottom*, NLADA, 2008, page 91).

The lack of standards for public defense services has the potential for even greater devastation when the Constitutional rights of youth are violated in delinquency proceedings. "Juvenile justice representation is considered in many ways as an afterthought all across the state of Michigan. As inadequate as adult representation is, the treatment of kids in delinquency proceedings is far worse" (*A Race to the Bottom*, NLADA, 2008, page 34).

- Many attorneys lack training or experience specific to handling juvenile delinquency cases. There is no statewide training requirement to take court appointed juvenile work.

While areas such as child protection have government funded trainings financed by such programs as the Governor's Task Force on Children's Justice (Children's Justice Act funding) and Court Improvement Program funding, there is no such program in the delinquency realm. There is rarely, if ever, a training program dedicated to representing juveniles in delinquency proceedings.

- Juvenile public defense attorneys in Michigan have such unmanageable caseloads that they cannot provide an effective defense. This is true of both public defenders and of private lawyers who take large numbers of appointments in order to make this practice financially worthwhile.
- Youth are advised to waive counsel, without an adequate explanation of the potentially severe consequences.
- Youth often meet their attorneys for just a few minutes before trials.
- It is common practice for public defense attorneys to advise their juvenile clients to plead guilty before the lawyer has conducted any factual investigation of the case.
- There is little to no funding for investigators, experts or specialists.

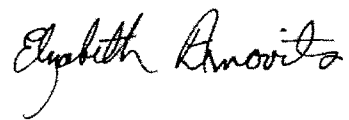
Many children charged in Michigan often proceed without the guidance of counsel at their side. Parents sometimes tell their children to waive their right to counsel – for some, because of the cost they are told they will have to pay afterward; for others, because there is a clear conflict of interest (domestic violence or other problems at home). In other cases, children are just not informed that they can speak with an attorney to decide whether or not to have an appointed attorney.

The significant failures of the system have since led to the creation of a culture that discourages aggressive representation of youths charged as delinquents. While Michigan's law and juvenile court rules are far from ideal in responding to delinquency, lawyers too often fail to utilize the legal tools currently available to them on behalf of their young clients. This is not necessarily because the lawyers appointed by the courts are professionally incompetent but, rather, is largely the result of forty years of practice in our courts that discourage real advocacy on behalf of allegedly delinquent children. At a basic level, lawyers are sometimes confused about whether the client is the youth, the youth's parents or the court. Rarely does an attorney have the time or resources to remain involved in a case through disposition. The lack of advocacy creates an environment in which the burden of defense falls upon the child rather than the attorney. Finally, Michigan practices encourage a "processing" or "rocket docket" approach that further discourages attorneys from pursuing advocacy that meets the needs of juveniles in the system.

As you continue your work on this important issue, we encourage you to pursue a legislative reform plan that establishes a statewide system for our public defense system, one that is

supported by state funds. In addition, Michigan's system must be based on basic standards, standards recognized nationally and in place in states across our country. Your efforts on this important legislative issue are important, and we look forward to working with you to improve the public defense system in our state. Thank you again for this opportunity to present testimony on such an important issue.

Sincerely,

A handwritten signature in black ink, reading "Elizabeth Amovito". The signature is written in a cursive, flowing style. The first name "Elizabeth" is written with a large, prominent "E" and the last name "Amovito" follows in a similar cursive script.